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In the Supreme Court of the United States

OCTOBER TERM, 1956

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, PETITIONER

v.

PRODUCERS LIVESTOCK MARKETING ASSOCIATION, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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PRODUCERS LIVESTOCK MARKETING ASSOCIATION, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, the Secretary of Agriculture of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered on February 15, 1957, in the above-entitled cause.

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is printed in Appendix A to this petition, *infra*, pp. 25–33, and is reported in 241 F. 2d 192.

JURISDICTION

The judgment of the Court of Appeals (Appendix B, infra, pp. 34–35) was entered on February 15, 1957. The jurisdiction of this Court is invoked under 5 U. S. C. 1952 ed. § 1040 and 28 U. S. C. 1952 ed. § 1254 (1). It is provided, *inter alia*, in 5 U. S. C.

1952 ed. § 1040 that "[e]ither the United States or the agency or an aggrieved party may file such petition for a writ of certiorari."

QUESTIONS PRESENTED

A stockyard owner and market agency are obligated—under the Packers and Stockyards Act—"upon reasonable request" to furnish "reasonable stockyard services" at a stockyard which is regulated under the Packers and Stockyards Act, and a stockyard owner and market agency are also required by the Act to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of "reasonable stockyard services." The regulations issued by the stockyard owner were challenged, in the administrative proceeding, by a market agency, but no evidence was adduced as to whether the regulations are unreasonable. The questions presented are:

(1) Whether the regulations are, as a matter of law, illegal on their face because in a certain hypothetical situation, referred to by the Court of Appeals, the regulations would seem to be unreasonable.

(2) Whether the regulations are, as a matter of law, illegal in their entirety because, as held by the Court of Appeals, in a certain hypothetical situation a significant part of the regulations would be unreasonable.

(3) Whether, in the total absence of any evidence to show that the regulations are unreasonable, the regulations are, as a matter of law, unreasonable and the administrative agency is required, as a matter of law,

to issue a cease and desist order with respect to the regulations.

THE STATUTORY PROVISIONS AND ADMINISTRATIVE REGULATIONS

The petition for judicial review of the administrative decision, holding that the regulations are not, on their face, illegal as a matter of law, is based on the Hobbs Act (64 Stat. 1129, 5 U. S. C. 1952 ed. § 1031 *et seq.*), and the administrative decision thus subjected to judicial review is based on the Packers and Stockyards Act, 1921 (42 Stat. 159, as amended, 7 U. S. C. 1952 ed. § 181 *et seq.*).

The Packers and Stockyards Act regulates, *inter alia,* the marketing of livestock at those stockyards which are "posted" by the Secretary of Agriculture, i. e., determined by the Secretary to be within the statutory definition of a "stockyard" in 7 U. S. C. 1952 ed. § 202 (a). The Act prohibits a market agency or dealer from engaging in business at a posted stockyard unless the market agency or dealer is registered with the Secretary. 7 U. S. C. 1952 ed. § 203. A "market agency" is defined in the Act as "any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services." 7 U. S. C. 1952 ed. § 201 (c). The statutory term "stockyard services" is defined as "services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock." 7 U. S. C. 1952 ed. § 201 (b). The term

"dealer" is defined in the Act as "any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser." 7 U. S. C. 1952 ed. § 201 (d). The term "stockyard owner," as defined in the Act, means "any person engaged in the business of conducting or operating a stockyard." 7 U. S. C. 1952 ed. § 201 (a).

It is "the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard * * *." 7 U. S. C. 1952 ed. § 205. It is also "the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful." 7 U. S. C. 1952 ed. § 208.

Whenever after a "full hearing upon a complaint * * * the Secretary is of the opinion that any * * * regulation * * * of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory," the Secretary may "determine and prescribe * * * what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed" and may by order require the stockyard owner or market agency to "conform to and observe the regulation or practice so prescribed." 7 U. S. C. 1952 ed. § 211.

The Secretary is authorized to issue "such rules, regulations, and orders as may be necessary to carry out the provisions of this chapter * * *." 7 U. S. C. 1952 ed. § 228. The regulations issued by the Secretary relate, *inter alia,* to the posting of stockyards, the registration of market agencies and dealers, and the facilities and services at posted stockyards. 9 CFR Cum. Supp. § 201.1 *et seq.* The rules of practice issued by the Secretary relate, *inter alia,* to disciplinary and other adjudicatory proceedings. 9 CFR § 202.5 *et seq.*

It is provided in the rules of practice that informal complaints may be filed by an interested person, and "if the Administrator should so determine, a proceeding filed pursuant to section 304 of the Act [i. e., 7 U. S. C. 1952 ed. § 205] or a proceeding involving the application of a regulation established or filed pursuant to section 307 of the Act [i. e., 7 U. S. C. 1952 ed. § 208], may be instituted upon the moving paper filed by the person who filed the informal complaint." 9 CFR § 202.6 (b).

STATEMENT

The genesis of the case is the complaint filed with the Secretary of Agriculture by the Producers Livestock Marketing Association, a market agency at the Denver Union Stock Yard. It is alleged in the complaint that certain regulations issued by the Denver Union Stock Yard Company are invalid under the Packers and Stockyards Act (R. 40–44).[1] The con-

[1] The references herein to the record are to the Transcript of Record filed in this Court by the Denver Union Stock Yard Company in connection with its petition for certiorari—to re-

tested regulations, issued by the stockyard owner, provide that "[n]o market agency or dealer engaging in business at this Stockyard shall, upon Stock Yard Company property, or elsewhere, nor shall any other person upon Stock Yard Company property * * * [s]olicit any business for other markets, for sale at outside feed yards or at country points, or endeavor to secure customers to sell or purchase livestock elsewhere" or divert livestock from this market which would otherwise normally come to this market or interfere with the normal flow of livestock to this market (R. 40–44). The "normal marketing area" is defined in the regulations as being the State of Colorado with certain counties or areas therein excepted (R. 41). It is averred in the complaint that the regulations are invalid and the prayer, in the complaint, is that the regulations be set aside and annulled (R. 40–44).

It was administratively determined, under the procedural regulations (9 CFR § 202.6 (b)), that the "complaint should be entertained as the moving paper initiating a proceeding [by the Producers Livestock Marketing Association, as the complainant, against the Denver Union Stock Yard Company, as the respondent in the administrative proceeding] under the rules applicable to disciplinary proceedings * * *" (R. 63).

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view the judgment of the Court of Appeals as to which we are also filing this petition for certiorari—in *Denver Union Stock Yard Company* v. *Producers Livestock Marketing Association*, October Term, 1956, No. 917.

An answer was filed, in the administrative proceeding, by the Denver Union Stock Yard Company admitting that it issued the regulations and alleging, *inter alia*, that the regulations are necessary to enable the stockyard owner "to furnish, upon reasonable request, without discrimination, reasonable stockyard services * * * and to enable the patrons of the Denver Union Stockyards to secure, upon reasonable request, without discrimination, reasonable stockyard services * * *" (R. 47). It is also alleged in the answer that the practices of the Producers Livestock Marketing Association and some others are contrary to the duties and responsibilities of such registrants at this market and that the regulations are necessary in order to effectuate just, reasonable, and non-discriminatory practices at the Denver market (R. 47–48). The prayer in the answer is that the Stock Yard Company "be granted an oral hearing * * * and that the complaint be dismissed" (R. 49).

The Denver Union Stock Yard Company, as the respondent in the administrative proceeding, filed a motion—in preparation for the administrative hearing—to require the Producers Livestock Marketing Association to produce, for examination and copying, certain books and records identified in the motion and alleged to be relevant and necessary in order to show that the contested regulations are reasonable and relate only to the performance of reasonable stockyard services (R. 50–55).

In opposing the motion by the Stock Yard Company for the production of certain books and records

of the marketing association, the Producers Livestock Marketing Association filed an election "to stand upon the illegality of said regulation, as a matter of law," and contended that the regulation "is illegal and invalid upon its face" (R. 73). It was stated by the Producers Livestock Marketing Association, in its "Election to Rest," that "it will not present evidence in this cause, as the taking of evidence is unnecessary to determine the illegality of said regulation as a matter of law," and it was stated that the Association "hereby rests and submits its case for final decision by the Secretary of Agriculture" (R. 73).

The Hearing Examiner was of the opinion that the proceeding, in these circumstances, should be "certified to the Judicial Officer for decision, with a recommendation that it be dismissed" (R. 74). The basic issue, viz, whether the regulations are as a matter of law illegal on their face, was resolved by the Judicial Officer.[2] The Judicial Officer concluded that, upon the limited record before him, he could not find that the contested regulations of the Denver Union Stock Yard Company, the respondent in the administrative proceeding, are invalid upon their face and, accordingly, he dismissed the complaint (R. 32–33). It was made plain in the decision by the Judicial Officer that the issue for decision is not the broad question as to whether the regulations are, under the relevant facts and circumstances, valid or invalid but only the nar-

[2] The Judicial Officer acted for the Secretary of Agriculture pursuant to authority delegated to the Judicial Officer. 10 F. R. 13769; 11 F. R. 177A–233; 18 F. R. 3219, 3648; 19 F. R. 74.

row question as to whether the regulations are, as a matter of law, invalid on their face (R. 16).

The Producers Livestock Marketing Association filed a petition in the Court of Appeals to review the decision of the Judicial Officer. The United States and the Secretary of Agriculture were designated as the respondents in the Court of Appeals (R. 1), and the Denver Union Stock Yard Company intervened as a respondent in the Court of Appeals (R. 33–34).

The Court of Appeals concluded that the regulations are violative of the statutory requirement that a stockyard owner or market agency shall, upon reasonable request, furnish reasonable stockyard services at a posted stockyard. "The compulsion of the regulation," said the Court of Appeals (*infra*, Appendix A, pp. 30–31), "is in immediate conflict with the requirement of Sec. 304 [of the Packers and Stockyards Act] which contemplates and imposes a duty upon marketing agencies to render reasonable services to its [sic] customers at *every* stockyard where they do business. If by rendering reasonable service for a Colorado customer at one stockyard a market agency is prohibited from rendering reasonable service for the same or a different Colorado customer at another stockyard it is apparent that the agency cannot perform its statutory duty in one regard or another." Accordingly, the Court of Appeals was of the opinion that the regulations are an unlawful restriction upon "the statutory rights and duties of petitioners and all market agencies" and bear "no reasonable relationship to the duties required of the stockyard company under the provisions of the Packers and

Stockyards Act," and are invalid (*infra,* Appendix A, pp. 32–33). The Court of Appeals remanded the proceeding to the Secretary of Agriculture with directions to issue a cease and desist order against the issuance or enforcement of the regulations by the stockyard owner (*infra,* Appendix, B, pp. 34–35).

REASONS FOR GRANTING THE WRIT

1. The furnishing of "reasonable stockyard services," by stockyard owners and market agencies, is a basic requirement of the Packers and Stockyards Act (7 U. S. C. 1952 ed. § 205), applicable at more than 450 stockyards throughout the Nation. Although the term "stockyard services" is defined in the Act (7 U. S. C. 1952 ed. § 201 (b)), there is, however, no statutory definement of the word "reasonable" as used in the term "reasonable stockyard services." The stockyard owners and market agencies are required by the Act to issue, observe, and enforce regulations to effectuate the furnishing of "reasonable stockyard services." 7 U. S. C. 1952 ed. § 208. These provisions, in the statutory plan, are of pivotal importance in the administration of the Act.

Various terminal stockyards have regulations which are similar to the contested rules of the Denver Union Stock Yard Company.[3] Many terminal stockyards

[3] See, Kansas City Stock Yards Co., Tariff 12, Rules 9 and 10; Union Stock Yard Co. of Baltimore County, Maryland, Tariff 11, Supplement 13, Rule 14; Los Angeles Union Stockyards Co., Tariff 16, Item 10 (c); Union Stock Yards, San Antonio, Texas, Tariff 13, Item 10 (c); The Ogden Union Stockyards Co., Tariff 12, Rule 11; Union Stock Yards Co. of Montgomery, Tariff 11, Rule 9; Jonesboro Stockyards, Inc., Jonesboro, Arkansas, Tariff 2, Supplement 7, Rule 9; Stock-

have regulations in effect to prohibit market agencies and dealers from engaging in various business activities in certain areas of the stockyards or in certain areas adjacent to the stockyards.[4] It is provided in

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ton Union Stockyards, Stockton, California, Tariff 6, Rules 1 (A), 1 (C) (3), 1 (C) (6), 1 (C) (7); The Fort Smith Stockyards, West Fort Smith, Oklahoma, Tariff 2, Rules 13 and 14. These regulations are on file in the Livestock Division, Agricultural Marketing Service, U. S. Department of Agriculture. An adjudicatory proceeding is pending in the Department with respect to the validity of the regulations in the Los Angeles market. *Producers Livestock Marketing Association* v. *Los Angeles Union Stock Yards Company*, P. & S. Docket No. 2188. It is provided in the regulations applicable to market agencies and dealers at the Los Angeles market, *inter alia*, as follows: "No market agency or dealer engaging in business at this Stockyard shall, upon Stock Yard Company property, or elsewhere, nor shall any other person upon Stock Yard Company property—(1) Solicit any business for other markets, for sale at outside feed yards or at country points, or endeavor to secure customers to sell or purchase livestock elsewhere; or (2) In any manner divert or attempt to divert livestock from this market which would otherwise normally come to this Stockyard; or (3) Engage in any practice or device which would impair or interfere with the normal flow of livestock to the public market at this Stockyard." Los Angeles Union Stockyards Co., Tariff 16, Item 10 (c).

[4] See, Union Stock Yards, San Antonio, Texas, Tariff 13, Item 10 (a) and (b); St. Paul Union Stockyards Co., Tariff 26, Rule 8; Union Stock Yards Co. of Omaha, Tariff 17, Rule 4; Kansas City Stock Yards Co., Tariff 12, Rule 14; The Denver Union Stock Yard Co., Tariff 14, Item 10 (a); Ft. Worth Stockyards, Tariff 7, Rule 9; Los Angeles Union Stockyards Co., Tariff 16, Item 10 (a) and (b); The Sioux City Stock Yards Co., Tariff 15, Rule 8; The Wichita Union Stock Yards Co., Tariff 13, § VI (C); St. Joseph Stock Yards Co., Tariff 20, Item 11 (l); Union Stock Yard Co. of Baltimore County, Maryland, Tariff 11, Rule 6; Billings Public Stockyards, Billings, Montana, Tariff 5, Rule 8; Brighton Stock Yards Co., Brighton, Mass., Tariff 2, Rule 4; The Buffalo Stock Yards,

the regulations in effect in 42 terminal stockyards that "stockyard services" will be furnished only to a "reasonable number" of market agencies and dealers, and the stockyard companies reserve the right to refuse to furnish any services to market agencies and dealers in excess of the number considered by the

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Tariff 11, Rule 4; The Bushnell Stock Yards Co., Bushnell, Ill., Tariff 2, Rule 9; The Cleveland Union Stock Yards Co., Tariff 8, Rule 9; The Union Stock Yards Co., Dayton, Ohio, Tariff 6, Rule 6; The Detroit Stock Yards, Tariff 12, Rule 4; The Evansville Union Stock Yards Co., Tariff 10, Rule 12; Union Stockyards of Fargo, West Fargo, North Dakota, Tariff 7, Rule 9; The Fort Smith Stockyards, West Fort Smith, Oklahoma, Tariff 2, Rule 8; Port City Stockyards Co., Houston, Texas, Tariff 4, Rule 7; The Belt Rail Road and Stock Yards Co., Indianapolis, Indiana, Tariff 8, Rule 10; The Joplin Stockyards, Inc., Joplin, Missouri, Tariff 3, § 9 (C) and (J); Greater Little Rock Stockyards, Tariff 1, Item 7; South Memphis Stock Yards Co., Tariff 11, § 13 (7); Milwaukee Stockyards, Tariff 3, Rule 8; Union Stock Yards Co. of Montgomery, Tariff 11, Rule 3 (c); The Ogden Union Stockyards Co., Tariff 12, Rule 10; Parsons Stockyards Operating Co., Parsons, Kansas, Tariff 2, Rule 4; The Peoria Union Stock Yards Co., Tariff 11, Item 3; Pittsburgh Joint Stock Yards Co., Tariff 6, § 13 (4); Portland Union Stock Yards Co., Tariff 19, Rule 9; Richmond Union Stock Yards Co., Tariff 9, Rule 9; Missi. ippi Valley Stockyards, St. Louis, Missouri, Tariff 8, Rule 4; Salt Lake Union Stock Yards, Tariff 8, Rule 8; South San Francisco Union Stockyards, Tariff 8, Rule 9; Sioux Falls Stock Yards Co., Tariff 11, Rule 8; Old Union Stockyards Co., Spokane, Washington, Tariff 9, Rule 11; The Union Stock Yards Co., Springfield, Missouri, Tariff 3, Item 13; Stockton Union Stockyards, Stockton, California, Tariff 6, Rule 8; Tulsa Stockyards, Inc., Tariff 4, Item 6 (4); Vinita Stockyards, Inc., Vinita, Oklahoma, Tariff 2, Rule 4. These regulations are on file in the Livestock Division, Agricultural Marketing Service, U. S. Department of Agriculture.

stockyard companies to be reasonable.[5] It is the general practice of the stockyard companies to promulgate rules whereby stockyard services are denied to any market agency or dealer who engages in unfair,

[5] See, Union Stock Yard Co. of Baltimore County, Maryland, Tariff 11, Rule 2; Billings Public Stockyards, Billings, Montana, Tariff 5, Rule 15 (B); The Buffalo Stock Yards, Tariff 11, Rule 3; The Bushnell Stock Yards Co., Bushnell, Ill., Tariff 2, Rule 13; The Cincinnati Union Stock Yard Co., Tariff 12, Rule 9; The Cleveland Union Stock Yards Co., Tariff 8, Rule 2 (b); The Union Stock Yards Co., Dayton, Ohio, Tariff 6, Rule 9; The Detroit Stock Yards, Tariff 12, Rule 3; The Evansville Union Stock Yards Co., Tariff 10, Rule 2; Union Stockyards Co. of Fargo, West Fargo, N. D., Tariff 7, Rule 1 (B); The Fort Smith Stockyards, West Fort Smith, Oklahoma, Tariff 2, Rule 10; Fort Worth Stockyards, Tariff 7, Rule 2; Port City Stock Yards Co., Inc., Houston, Texas, Tariff 4, Rule 4; The Belt Rail Road and Stock Yards Co., Indianapolis, Ind., Tariff 8, Rule 2; Jonesboro Stockyards, Inc., Jonesboro, Ark., Tariff 2, Rule 4; The Joplin Stockyards, Inc., Joplin, Mo., Tariff 3, § 9 (G); Greater Little Rock Stockyards, Tariff 1, Item 11; Los Angeles Union Stockyards Co., Tariff 16, Item 4; Bourbon Stock Yard Co., Louisville, Ky., Tariff 17, Rule 2; Dixie National Stock Yards, Inc., Memphis, Tenn., Tariff 7, § 6; South Memphis Stock Yards Co., Tariff 11, § 6; Milwaukee Stockyards, Tariff 3, Rule 10; Union Stock Yards Co. of Montgomery, Tariff 11, Rule 2; Oklahoma National Stock Yards Co., Tariff 12, Rule 9; Parsons Stockyards Operating Co., Parsons, Kan., Tariff 2, Rule 6; The Peoria Union Stockyards Co. Inc., Tariff 11, Item 13; Pittsburgh Joint Stock Yards Co., Tariff 6, § 13 (2); Portland Union Stock Yards Co., Tariff 19, Rule 15; Richmond Union Stock Yards Co., Tariff 9, Rule 2; Union Stock Yards, San Antonio, Tariff 13, Item 4; South San Francisco Union Stockyards, Tariff 8, Rule 14; The Sioux City Stockyards Co., Tariff 15, Rule 13; Sioux Falls Stock Yards Co., Tariff 11, Rule 13; Old Union Stockyards Co., Spokane, Wash., Tariff 9, Rule 2; The Union Stock Yards Co., Springfield, Mo., Tariff 3, Item 10; Stockton Union Stockyards, Stockton, California, Tariff 6, Rule 1 (B); Tulsa Stockyards, Inc., Tariff 4, Item 6 (8); The

dishonest, or fraudulent practices, or who destroys stockyard property, or who engages in other proscribed activities.[6] It cannot be gainsaid that the authority of the stockyard owners to issue rules and regulations with respect to the furnishing of reasonable stockyard services, upon reasonable request, is of vital importance in this great industry.

Wichita Union Stock Yards Co., Tariff 13, § VI (G); Vinita Stockyards, Inc., Vinita, Oklahoma, Tariff 2, Rule 9; St. Paul Union Stockyards Co., Tariff 26, Rule 15; Kansas City Stock Yards Co., Tariff 12, Rule 6; The Denver Union Stock Yard Co., Tariff 14, Item 4. These regulations are on file in the Livestock Division, Agricultural Marketing Service, U. S. Department of Agriculture.

[6] See, Union Stock Yard Co. of Baltimore County, Tariff 11, Rules 11 and 12; Billings Public Stockyards, Billings, Montana, Tariff 5, Rules 9 and 15 (F); Brighton Stock Yards Co., Brighton, Mass., Tariff 2, Rule 3; The Buffalo Stock Yards, Tariff 11, Rule 13; The Bushnell Stock Yards Co., Bushnell, Ill., Tariff 2, Rules 10 and 11; The Union Stock Yard and Transit Co. of Chicago, Tariff 17, § 11; The Cincinnati Union Stock Yard Co., Tariff 12, Rule 13; The Cleveland Union Stock Yards Co., Tariff 8, Rule 14; The Union Stock Yards Co., Dayton, Ohio, Tariff 6, Rule 11; The Detroit Stock Yards, Tariff 12, Rule 12; The Evansville Union Stock Yards Co., Tariff 10, Rule 8; Union Stockyards of Fargo, West Fargo, North Dakota, Tariff 7, Rule 10; The Fort Smith Stockyards, West Fort Smith, Oklahoma, Tariff 2, Rules 1, 2, and 21; Fort Wayne Union Stock Yards Co., Tariff 6, Rule 4; Fort Worth Stockyards, Tariff 7, Rules 6, 8, and 13; Port City Stock Yards Co., Houston, Texas, Tariff 4, Rules 10 and 12; The Jersey City Stock Yards, Inc., Tariff 2, § IX; Jonesboro Stockyards, Inc.; Jonesboro, Ark., Tariff 2, Rules 1 and 6; The Joplin Stockyards Inc., Joplin, Mo., Tariff 3, §§ 9 (D), 9 (E), and 9 (I); Union Stock Yard Co. of Lancaster, Tariff 10, p. 3; Greater Little Rock Stockyards, Tariff 1, Items 8 and 9; Los Angeles Union Stockyards Co., Tariff 16, Item 1; Bourbon Stock Yard Co., Louisville, Ky., Tariff 17, Rule 9; Dixie National Stock Yards, Inc., Memphis, Tenn., Tariff 7,

The regulations in the case at bar were issued by the stockyard owner at the Denver market, and the regulations were nullified by the Court of Appeals on a record that (1) is void of an administrative find-

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§ 12 (3); South Memphis Stock Yards Co., Tariff 11, § 13 (4); Milwaukee Stockyards, Tariff 3, Rule 9; Union Stock Yards Co. of Montgomery, Tariff 11, Rule 14; Farmers National Stock Yard Co., Muncie, Ind., Tariff 2, Rule 7; Nashville Union Stock Yards, Inc., Tariff 9, Rules 5 and 6; St. Louis National Stockyards Co., Tariff 9, § XV; Union Stock Yard & Market Co., New York, New York, Tariff 7, Item 7 (1); The Ogden Union Stockyards Co., Tariff 12, Rule 17; Oklahoma National Stock Yards Co., Tariff 12, Rule 11; Parsons Stockyards Operating Co., Parsons, Kansas, Tariff 2, Rules 9, 10, and 11; The Peoria Union Stock Yards Co., Tariff 11, Item 1; Pittsburgh Joint Stock Yards Co., Tariff 6, § 13 (8) and (9); Portland Union Stock Yards Co., Tariff 19, Rules 10 and 14; Richmond Union Stock Yards Co., Tariff 9, Rule 13; St. Joseph Stock Yards Co., Tariff 20, Item 11 (3) and (4); Mississippi Valley Stockyards, St. Louis, Mo., Tariff 8, Rule 1; Salt Lake Union Stock Yards, Tariff 8, Rule 5; Union Stock Yards, San Antonio, Tariff 13, Item 2; South San Francisco Union Stockyards, Tariff 8, Rule 10; Seattle Union Stockyards Co., Tariff 1, Item 11; The Sioux City Stock Yards Co., Tariff 15, Rule 9; Sioux Falls Stockyards Co., Tariff 11, Rule 9; Old Union Stockyards Co., Spokane, Washington, Tariff 9, Rule 10; Springfield Stock Yards Co., Springfield, Ill., Tariff 2, Rules 4 and 7; The Union Stock Yards Co., Springfield, Mo., Tariff 3, Item 12; Stockton Union Stockyards, Stockton, California, Tariff 6, Rule 9; Texarkana Stockyards, Inc., Texarkana, Texas, Tariff 3, Item 7 (1), (2), and (8); Tulsa Stockyards, Inc., Tariff 4, Item 6 (2) and (5); The Wichita Union Stock Yards Co., Tariff 13, § VI (D) and (E); Vinita Stockyards, Inc., Vinita, Oklahoma, Tariff 2, Rule 11; St. Paul Union Stockyards Co., Tariff 26, Rule 9; Union Stock Yards Company of Omaha, Tariff 17, Rule 3; Kansas City Stock Yards Co., Tariff 12, Rules 1 and 2; The Denver Union Stock Yard Co., Tariff 14, Item 1. These regulations are on file in the Livestock Division, Agricultural Marketing Service, U. S. Department of Agriculture.

ing that the regulations are unreasonable and (2) is barren of evidence to show that the regulations are unreasonable. The complainant—market agency—in the administrative proceeding against the Denver Union Stock Yard Company filed an "Election to Rest," stating that the complainant "will not present evidence in this cause, as the taking of evidence is unnecessary to determine the illegality of said regulation as a matter of law" (R. 73). The complainant elected to stake its case on the proposition that the regulations are invalid on their face as a matter of law and that all evidence is, therefore, immaterial in this proceeding (R. 73). The only question, therefore, before the Judicial Officer in the Department of Agriculture was whether the regulations were on their face illegal as a matter of law, and being unable to conclude that the regulations, considered *in vacuo*, are as a matter of law illegal, the Judicial Officer dismissed the complaint (R. 6–33). Specifically, the Judicial Officer did not decide the question which could have been presented during the administrative hearing—but which was not presented—by the complainant as to whether the regulations are, in view of the facts, unreasonable and, therefore, invalid.[7] The Court of Appeals—although recognizing that the only question is whether the regulations are as a matter of law illegal on their face—resolved the basic

[7] The Judicial Officer has no statutory authority, in this adjudicatory proceeding, to compel the complainant to rely on an additional issue—an issue which is antithetical to the complainant's position that its books and records should not be made available to the Stock Yard Company.

issue of law by assuming a factual situation which is not in the case. The Court of Appeals held:

> The compulsion of the regulation is in immediate conflict with the requirement of Sec. 304 [of the Packers and Stockyards Act, 7 U. S. C. 1952 ed. § 205] which contemplates and imposes the duty upon marketing agencies to render reasonable services to its [sic] customers at *every* stockyard where they do business. If by rendering reasonable service for a Colorado customer at one stockyard a marketing agency is prohibited from rendering reasonable service for the same or a different Colorado customer at another stockyard it is apparent that the agency cannot perform its statutory duty in one regard or another (*infra,* Appendix A, pp. 30–31).

The decisiveness of that holding by the Court of Appeals is revealed by its explanation that "[a]lthough it may be argued that attempts, successful or otherwise, by a marketing agency to divert business from a stockyard may result in disharmony between the parties [i. e., the market agency and the stockyard owner] and thereby lower the ability of both to render efficient service [i. e., reasonable stockyard services], still such argument, even if proved to be soundly based in fact, has no legal significance" (*infra,* Appendix A, p. 31).

There is nothing in the record to support the hypothesis or *suppositum* by the Court, and the Court's opinion is based only on the supposal set forth in its opinion. The holding by the Court is squarely in conflict with *Associated Press* v. *Labor Board,* 301

U. S. 103, 132, in which it was held that courts, in passing on the validity of regulation under an Act of Congress, are to dispose of a case "upon the basis of the facts disclosed," never on the basis of "nonexistent and assumed circumstances." It was argued in *Associated Press* v. *Labor Board, supra,* that the regulation would be illegal in a certain hypothetical situation, but that was disposed of by the Court's statement that "[n]o such question is here for decision. * * * [The appellant] seeks to bar all regulation by contending that regulation in a situation not presented would be invalid. Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances."

The principle which was applied in *Associated Press* v. *Labor Board, supra,* 301 U. S. at 132, is particularly forceful with respect to a statutory standard of generality and adaptability such as the term "reasonable." "Questions of reasonableness are necessarily questions of relation or degree," and each case "demands a close scrutiny of its own facts." *Sugar Institute* v. *United States,* 297 U. S. 553, 600. The statutory terms—the requirements for the furnishing of "reasonable stockyard services" upon "reasonable request" and the issuance of reasonable regulations to effectuate the legislative goal—do not lend themselves to application with exactitude as a matter of law but constitute a policy to be followed in view of the mutable and variant factual situations in the various stockyards throughout the country. The application of the statutory rule of reasonableness mani-

festly turns on the exigencies of a particular situation.[8]

The stockyard owner, in its answer in the administrative proceeding in the case at bar, denied that the regulations are discriminatory or unreasonable and averred that the regulations are necessary to enable the stockyard owner "to furnish, upon reasonable request, without discrimination, reasonable stockyard services * * * and to enable the patrons of the Denver Union Stockyards to secure, upon reasonable request, without discrimination, reasonable stockyard services * * *" (R. 47). To be sure, the complaint filed in the administrative proceeding alleged the invalidity of the regulations (R. 40–44) but "[u]nreasonableness is not made out by mere assertion." *Swift & Co.* v. *United States*, 343 U. S. 373, 388. *A fortiori* unreasonableness is not made out by mere speculation or surmise. The statute here, as in *United States* v. *Trucking Co.*, 310 U. S. 344, 352–353, "does not attempt to define an unlawful discrimination with mathematical precision" and whether a particular practice is "unreasonable" or "unjust" and therefore unlawful is for determination by the administrative agency in the "application of an informed judgment to existing facts."

[8] It has been said that "[s]tatutory reasonableness is an abstract quality represented by an area rather than a pinpoint" (*Montana-Dakota Co.* v. *Public Serv. Co.*, 341 U. S. 246, 251), and a stockyard owner or market agency is not required, under the Packers and Stockyards Act, to furnish stockyard services "under any and all circumstances to all comers" (*DeVries* v. *Sig Ellingson & Co.*, 100 F. Supp. 781, 786 (D. Minn.), affirmed, 199 F. 2d 677 (C. A. 8), certiorari denied, 344 U. S. 934).

If regulations are invalid whenever it can be surmised or conjectured that in a particular situation the regulations would be discriminatory or unreasonable, the congressional purpose for the issuance and enforcement of the regulations will be seriously impaired. The furnishing of reasonable stockyard services, as required by the Act, is facilitated in many markets throughout the Nation by the issuance and enforcement of regulations, *supra*, pp. 10–15, and the reasonableness of the regulations plainly depends upon the facts in each case.[9] The basis for the holding of the Court of Appeals will make the administration of the Packers and Stockyards Act subject to manifest uncertainties and inequities. The disruptive effect of the holding by the Court of Appeals is of wide concern to the many stockyard owners who "[s]ince 1947 * * * have spent millions of dollars in modernizing and improving their facilities so as to give better service to patrons" (*Marketing*, Yearbook of Agriculture, 1954, p. 283). The decision by the Court of Appeals is also a matter of important concern to the Secretary of Agriculture in the adminis-

[9] See, e. g., *Fort Worth Stockyards Co.* v. *Brown* (Tex. C. C. A.), 161 S. W. 2d 549, 551–555; *Farmers Union Livestock Ass'n* v. *St. Paul Union S. Co.*, 97 F. Supp. 539–540 (D. Mont.); *De Vries* v. *Sig Ellingson & Co.*, 100 F. Supp. 781, 786 (D. Minn.), affirmed, 199 F. 2d 677 (C. A. 8), certiorari denied, 344 U. S. 934; *Kelly* v. *Union Stockyard & Transit Co. of Chicago*, 190 F. 2d 860, 864 (C. A. 7); *Flynn* v. *Kansas City Stock Yards Co.*, 12 Agr. Dec. 14, 23–27; *Farmers Union Livestock Ass'n* v. *St. Paul Union Stockyards Company*, 12 Agr. Dec. 1026, 1032–1033; *Dougherty* v. *Union Stock Yard & Transit Co.*, 13 Agr. Dec. 239, 242–245.

tration of this legislation which is applicable to one of the major branches of our agricultural economy.[10] The issue decided by the Court of Appeals is of wide public importance, and should be passed upon by this Court.

2. The statutory provision relied on by the Court of Appeals is applicable only to a part of the regulations. The Court of Appeals said that the "compulsion" of the regulations "is in immediate conflict with the requirement of Sec. 304 [of the Packers and Stockyards Act] which contemplates and imposes a duty upon marketing agencies to render reasonable services to its [*sic*] customers at *every* stockyard where they do business" (*infra,* Appendix A, pp. 30–31). There is, however, no statutory duty in this respect as to dealers (7 U. S. C. 1952 ed. § 205), and the contested regulations are applicable to dealers as well as to market agencies. The assumed case on which the Court of Appeals disposed of the case does not relate to a dealer,[11] and if it did involve a dealer

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[10] The Secretary's regulations—applicable in all stockyards under the Act—provide that "[n]o market agency or licensee shall solicit consignments of livestock or live poultry at or on stockyard premises or in designated areas or after such livestock or live poultry has been billed or consigned to a market agency or licensee and is in course of transportation for delivery to the consignee at a posted stockyard or in a designated area." 9 CFR Cum. Supp. § 201.63. This regulation is similar to a significant part of the regulations, in the case at bar, invalidated by the Court of Appeals.

[11] This proceeding to have the regulations declared invalid was instituted by a market agency. No complaint has been made by a dealer, and no contention has been made by the market agency that it is prejudiced by the regulative provisions as to dealers. Hence, a question with respect to the regulations

there would be no impingement on the statutory provision referred to by the Court of Appeals.

There is manifestly no reason for nullifying the regulations with regard to dealers. Even if the regulations, in the hypothetical situation referred to by the Court of Appeals, are discriminatory or unreasonable as to market agencies, there is no ground for striking down the regulations with respect to dealers also. The Court of Appeals had jurisdiction to set aside or suspend, "in whole or in part, the order of the agency" (5 U. S. C. 1952 ed. § 1039 (a)), and it was clearly erroneous for the Court to nullify regulatory provisions which have not been challenged and which are clearly not invalid under the provision in the Packers and Stockyards Act (7 U. S. C. 1952 ed. § 205) relied on by the Court.

3. The decision of the Court of Appeals—ordering the Judicial Officer to issue a cease and desist order against the enforcement of the regulations—is repugnant to the provision of the Packers and Stockyards Act that whenever after a "full hearing upon a complaint * * * the Secretary is of the opinion that any * * * regulation * * * of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory," the Secretary may determine and prescribe what regulation is or will be just, reasonable, and nondiscriminatory to be thereafter followed and the Secretary may by order re-

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as applied to dealers would be outside the scope of this litigation.

quire the stockyard owner or market agency to conform to and observe the regulation prescribed by the Secretary. 7 U. S. C. 1952 ed. § 211. It is beyond the jurisdiction of the Court of Appeals (5 U. S. C. 1952 ed. § 1039 (a)) to order the Secretary to issue a cease and desist order.

This Court has said that "the function of the reviewing court ends when an error of law is laid bare," and the proceeding should then be remanded to the administrative agency "for reconsideration." *Federal Power Com.* v. *Idaho Power Co.*, 344 U. S. 17, 20. See, also, *Ford Motor Co.* v. *Labor Board*, 305 U. S. 364, 373–376; *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, 141–146. Here the regulations as to dealers are not subjected to attack in this litigation, and the Court of Appeals plainly erred in ordering the Secretary to issue a cease and desist order as to the regulations *in toto*.

The latitude which Congress vested in the Secretary has been destroyed by the decision of the Court of Appeals. The decision by the Court of Appeals should be reversed, and the Secretary of Agriculture will then be free to institute an investigation or proceeding, if such is deemed to be appropriate, with respect to whether the regulations at issue in this litigation are, in view of the facts, unreasonable. In this area of administration, where flexibility is necessary in view of the totality of the facts in each situation, the impairment of the basic statutory purpose is a matter of such important concern as to warrant review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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MAY 1957.

APPENDIX A

Opinion of the Court Below

United States Court of Appeals, Tenth Circuit

No. 5459—January Term, 1957

Producers Livestock Marketing Association, a corporation of Salt Lake City, Utah, petitioner

v.

United States of America and Ezra Taft Benson, Secretary of Agriculture, respondents

Denver Union Stockyard Company, intervenor-respondent

On petition to review decision and order of the Secretary of Agriculture

(February 15, 1957)

Before Huxman, Pickett and Lewis, *Circuit Judges*

Lewis, *Circuit Judge.*

This is a proceeding brought by petitioner under the Hobbs Act [1] seeking review of an order of the Secretary of Agriculture made under the Packers and Stockyards Act of 1921 (42 Stat. 159 as amended, 7 U. S. C. 1952 Ed., sec. 181, et seq.).[2] Petitioner is a

[1] Act of December 29, 1950, 64 Stat. 1129, 5 U. S. C. A. 1031, et seq.

[2] All further references to congressional enactments are to the Packers and Stockyards Act of 1921, as amended, except as specifically noted.

"marketing agency" as defined by the Act and has its principal office at Salt Lake City.[3] The United States is named respondent pursuant to statute[4] and the Secretary of Agriculture by rule of this court.[5] The Denver Union Stockyard Company is a "stockyard owner" as defined by the Act and has intervened as a party in interest upon motion, and as a matter of right.[6]

Section 307 of the Act[7] provides:

> It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.

Under the purported authority of this section the stockyard company did on May 11, 1955, issue the following Regulation 10 (c) contained in its "Tariff No. 14":

Item 10

INTERFERENCE WITH OPERATIONS

(a) * * *
(b) * * *
(c) No market agency or dealer engaging in business at this Stockyard shall, upon Stock

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[3] 5 U. S. C. 1033 provides: "The venue of any proceeding under this chapter shall be in the judicial circuit wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any such parties has its principal office, or in the United States Court of Appeals for the District of Columbia."

[4] 5 U. S. C. A., 1034.

[5] Rule 34 (1) as revised.

[6] 5 U. S. C. A., 1038.

[7] 7 U. S. C. A., 208.

Yard Company property, or elsewhere, nor shall any other person upon Stock Yard Company property—

(1) Solicit any business for other markets, for sale at outside feed yards or at country points, or endeavor to secure customers to sell or purchase livestock elsewhere; or

(2) In any manner divert or attempt to divert livestock from this market which would otherwise normally come to this Stock Yard; or

(3) Engage in any practice or device which would impair or interfere with the normal flow of livestock to the public market at this Stockyard.

The normal marketing area from which livestock would normally come to the public market at this Stockyard, and which is the area to which this subdivision (c) shall apply, is defined as all of the State of Colorado except that part listed as follows:

The area lying east of the line beginning with the westerly boundary of the County of Sedgwick where it intersects the Nebraska state line; thence south along the county line of Sedgwick and Phillips counties; thence west and south along the western boundary of Yuma county to its intersection with U. S. Highway 36; thence west to Cope and south along Colorado Highway 59 to Eads, Colorado; thence westerly along Highway 96 to Ordway; thence south on Highway 71 to Timpas; thence southwesterly via Highway 350 to Trinidad; thence south to New Mexico state line.

The provisions of paragraph (c) do not apply on livestock solely used for breeding purposes.

On July 7, 1955, the petitioner herein challenged the validity of the regulation by filing a complaint [8] with

[8] The administrative proceeding instituted by the Petitioner was a disciplinary proceeding which the Secretary is authorized to conduct as a result of complaints made concerning regula-

the Secretary of Agriculture to which the stockyard company answered. The elaborations of complaint and answer need not be set forth for purposes of present inquiry except to state that the status of petitioner and intervenor are admitted together with the issuance of the regulation attacked. At the hearing set before the judicial officer of the Department of Agriculture petitioner elected to rest without offering evidence, choosing to submit its case upon the sole ground that the regulation was invalid as a matter of law, illegal upon its face. The judicial officer, acting for the Secretary of Agriculture, ruled that the regulation was not invalid upon its face; that absent factual support relative to the potential or actual effect of the provisions of the regulation upon petitioner and the stockyard company he could not adjudicate whether the regulation would have a valid or invalid application; and dismissed petitioner's complaint. Aggrieved by the result and facing expulsion from the Denver yard upon violation of the regulation, petitioner seeks this review.

Being a public utility[9] the stockyard company has the inherent right to adopt regulations in regard to those phases of its business which are secondary to its major functions. Certain it is that the utility may prescribe rules for the conduct of its business and for its own protection from fraud or injury and may adopt and enforce reasonable and nondiscriminatory

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tions of stockyard owners (7 U. S. C. A. 211). The statute provides that "after full hearing upon a complaint" if the Secretary is of the opinion that the regulation is unjust, unreasonable, or discriminatory, he may order the stockyard owner to "cease and desist" from enforcing any such regulation (7 U. S. C. A. 211).

[9] *Stafford* v. *Wallace*, 258 U. S. 495, 42 S. Ct. 397, 66 L. Ed. 735.

regulations to that end.[10] Such right is not necessarily dependent upon statutory authority. But a regulation the effect of which is to govern not only the services rendered by the stockyard company but also services provided by a marketing agency and which, if disobeyed, will divorce the two, can be lawful only if issued in furtherance of the basic duty established by sec. 304 of the Act which provides:

> It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard * * *

Our inquiry is thus limited to a determination of whether or not the proposed regulation has any possible lawful application to the statutory duties imposed upon the stockyard company and the marketing agency "to furnish reasonable stockyard services." Stated more specifically: Does a stockyard company, in order to furnish reasonable stockyard services, have a right to restrict, by regulation, the diversion of the normal flow of livestock to its yard occasioned by any act of a marketing agency done within the normal marketing area of the yard?

It is the position of the stockyard company, adopted at least in part by the Secretary, that the question so raised could not be determined without a "full hearing" with presentation of evidence on both sides in accordance with Sec. 310 of the Packers and Stockyards Act and the regulations 9 C. F. R. 202.11 (a) and 9 C. F. R. 202.2 (g). At such a hearing, so says the stockyard company, it intended to and would show

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[10] *Steele* v. *Clinton Electric Light & Power Co.*, 123 Conn. 180, 193 A. 613, 112 A. L. R. 232; *DePass* v. *Broad River Power Co.*, 173 S. C. 387, 176 S. E. 325, 95 A. L. R. 545; *Hugh H. Hawkins* v. *Vermont Hydro-electric Corp.*, 98 Vt. 176, 126 Atl. 517, 37 A. L. R. 1359.

that Regulation 10 (c) was reasonable and necessary to prevent market agencies in the position of petitioner from undermining the business and public efficiency of the yard by the solicitation of business for other yards.

Although 9 C. F. R. 202.2 (g) defines "hearing" to be "that part of the proceeding which involves the submission of evidence", it is fundamental to the law that the submission of evidence is not required to characterize "a full hearing" where such evidence is immaterial to the issue to be decided. In construing a similar provision of the Interstate Commerce Act the Supreme Court has defined a full hearing as one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken. *Akron, C. & Y. Ry. Co.* v. *United States,* 261 U. S. 184, 43 S. Ct. 270, 67 L. Ed. 605. Where no genuine or material issue of fact is presented the court or administrative body may pass upon the issues of law after according the parties the right of argument. This was done in the instant case and constitutes a "full hearing" for consideration of the limited contention made by the petitioner in its complaint and by its election not to submit evidence.

The most casual study of Regulation 10 (c) shows the intent and effect of the rule to be an attempt to safeguard what the stockyard considers its normal market. Marketing agencies are not prohibited from dealing elsewhere entirely but are denied the services of the Denver yard if they even "endeavor to secure customers (within the prohibited geographic area) to sell or purchase elsewhere" than the Denver yards. The compulsion of the regulation is in immediate conflict with the requirement of Sec. 304 which contemplates

and imposes the duty upon marketing agencies to render reasonable services to its customers at *every* stockyard where they do business. If by rendering reasonable service for a Colorado customer at one stockyard a marketing agency is prohibited from rendering reasonable service for the same or a different Colorado customer at another stockyard it is apparent that the agency cannot perform its statutory duty in one regard or another.

Although it may be argued that attempts, successful or otherwise, by a marketing agency to divert business from a stockyard may result in disharmony between the parties and thereby lower the ability of both to render efficient service, still such argument, even if proved to be soundly based in fact, has no legal significance. The test of the validity of the regulation is not so dependent. Nor does the stockyard have the right to exclude from its yards those persons who lawfully trod upon its economic toes. The operation of a stockyard is affected with a public interest and devoted to a public use. Any properly exclusionary regulation must be based upon more than economic or personal desirability or its lack, for the duty to furnish services under the Act cannot be abrogated by consideration of the parties which might form a valid basis of private contract. *Carnes* v. *St. Paul Union Stockyards Co.*, 164 Minn. 457, 205 N. W. 630; *Nashville Union Stockyards* v. *Grissim*, 153 Tenn. 225, 280 S. W. 1015; *Farmers' Livestock Commission Co.* v. *U. S.* (D. C. E. D. Ill.) 54 F 2d 375.

Stockyard companies are not monopolies and are in fact in active competition one with the other. The rights and duties thus occasioned must be correlated with the rights and duties of other entities recognized under the Act and, both, finally, with the paramount public interest. An exclusionary regulation based

upon diversion of business, such as we here consider, unlawfully restricts petitioner as a marketing agency and wounds the public interest. The persuasive words of the Supreme Court of Tennessee, passing upon the legality of a comparable situation, are in accord.

> Furthermore, we fail to find anything in the Packer's and Stockyard's Act that requires defendant or his employer to transact all of their business of receiving, buying and selling livestock on complainant's premises or from buying livestock and causing the same to be shipped to others than complainant. In other words, there is nothing in the act which requires * * * the defendants to do all their business with complainant * * * *Nashville Union Stockyards* v. *Grissim, supra.*

The judicial officer expressed some concern as to whether he could properly consider this case absent some showing that the business done by petitioner with the stockyards was interstate commerce. Since the regulation was designed to affect all of the agents or dealers within the area, the question of petitioner's business does not arise, for whatever amounts to a constant practice and threatens to obstruct or unduly burden interstate commerce is within the regulatory power of Congress under the commerce clause, even though in a particular instance it affects only intrastate commerce. Stafford v. Wallace, supra, Note 9. Other contentions presented by the proponents of the regulation have been considered by us and deemed to be without merit.

We conclude that Regulation 10 (c) is an unlawful restriction upon the statutory rights and duties of petitioners and all market agencies and bears no reasonable relationship to the duties required of the stockyard company under the provision of the

Packers and Stockyards Act. The regulation is invalid upon its face and the cause is accordingly remanded with instructions to vacate the order dismissing petitioner's complaint and enter an appropriate order requiring the Denver Union Stockyard Company to cease and desist from issuing or enforcing its Regulation 10 (c).

APPENDIX B

JUDGMENT OF THE COURT BELOW

United States Court of Appeals, Tenth Circuit

NO. 5459—JANUARY TERM, 1957

PRODUCERS LIVESTOCK MARKETING ASSOCIATION, A CORPORATION OF SALT LAKE CITY, UTAH, PETITIONER

v.

UNITED STATES OF AMERICA AND EZRA TAFT BENSON, SECRETARY OF AGRICULTURE, RESPONDENTS

DENVER UNION STOCKYARD COMPANY, INTERVENOR-RESPONDENT

ON PETITION TO REVIEW DECISION AND ORDER OF THE SECRETARY OF AGRICULTURE

(February 15, 1957)

Judgment

Twenty-first Day, January Term, Friday, February 15th, 1957.

Before Honorable WALTER A. HUXMAN, Honorable JOHN C. PICKETT and Honorable DAVID T. LEWIS, *Circuit Judges*

This cause came on to be heard on the petition to review the decision and order of the Secretary of Agriculture, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the regulation is invalid upon its face and that this cause is accordingly remanded to the Secretary of Agriculture with instructions to vacate the order dismissing petitioner's complaint and enter an appropriate order requiring the

Denver Union Stockyard Company to cease and desist from issuing or enforcing its Regulation 10 (c). It is further ordered that Producers Livestock Marketing Association, a corporation of Salt Lake City, Utah, petitioner, have and recover of and from Denver Union Stockyard Company, respondent, its costs herein.

U. S. GOVERNMENT PRINTING OFFICE: 1957